



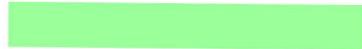
**U.S. Citizenship
and Immigration
Services**

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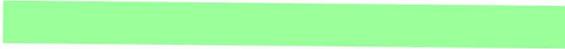


DATE: DEC 19 2013

Office: MEXICO CITY



IN RE: Applicant:



APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

R. Ron Rosenberg

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Mexico City, Mexico, denied the waiver application and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for one year or more. The applicant seeks a waiver of inadmissibility in order to immigrate to the United States as the beneficiary of an approved spousal Petition for Alien Relative (Form I-130).

The field office director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to his wife and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, June 5, 2013.

On appeal, the applicant contends that USCIS erred in determining that his wife would not suffer extreme hardship as a result of the applicant's inadmissibility. In support of the appeal, the applicant submits documentation including: a brief, updated hardship statements, and supportive statements; financial information, such as tax returns and letters regarding residential debts and medical expenses; business records; copies of a naturalization certificate; and updated doctor and dentist statements. The record also includes, but is not limited to, statements from the qualifying relative and the applicant; a medical letter and medical records; an application for cancellation of removal, supporting evidence, and an order granting voluntary departure. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General (Secretary) that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

The record reflects that the applicant entered the United States without admission or parole on November 1, 1996 as a 15 year-old accompanying his father. He remained in the country until returning to Mexico on February 20, 2009 pursuant to a voluntary departure order, having accrued

unlawful presence of one year or more from February 27, 1999, his 18th birthday. He thus incurred a 10 year bar on admission and requires a waiver in order to immigrate before February 2019.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). Factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968). However, while hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, or cultural readjustment differs in nature and severity depending on the unique

circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, although family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

For reasons discussed below, the AAO finds that the situation of the applicant's wife, should the applicant be unable to return to the United States, involves circumstances that amount to extreme hardship when considered in the aggregate.

Regarding whether the applicant has established that his 61-year-old wife would suffer extreme hardship by relocating to Mexico, the record reflects that she has lived here since immigrating from her native Dominican Republic at the age of 15, has no ties to Mexico besides her husband of nine years, has been a naturalized U.S. citizen for over 20 years, has five children and 12 grandchildren here, and is a small business owner. Besides having spent her entire adult life in this country, there is evidence that she receives health care at a free clinic and would be unable to afford in Mexico either the physician care or the medication to treat her many health problems. Medical records show she suffers pain from a herniated disc and plantar fasciitis and has high blood pressure, high cholesterol, and gastroesophageal reflux disease (GERD). In addition to taking prescription medication for each condition, her doctor since 2009 indicates treating her for depression and anxiety disorder with a prescription antidepressant. Documentation also shows she has periodontal disease for which her dentist recommends immediate surgery and without which she has heightened risk of developing heart and respiratory problems. The applicant's spouse claims she twice tried living in Mexico with her husband, but had to return to the United States because of poor health and lack of access to necessary medications. Her doctor notes that after each trip, she returned with her diseases out of control and that stopping her medications places her life in danger. Evidence shows that a family member paid for at least one trip to Mexico, her financial resources have declined for several years, and she receives free care and medicine through a U.S. clinic.

The applicant and his wife both assert being fearful for each other's safety in Mexico. Their statements note that there were gunshots fired in the area where he lives, bullets were found in his house, and he was the victim of a mugging. Official U.S. government reporting advises U.S. citizens to defer non-essential travel to the Mexico City suburb where the applicant resides. *See Travel Warning—Mexico*, U.S. Department of State (DOS), July 12, 2013.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to Mexico as a result of fears for her personal safety and that of her husband, poor employment prospects, and lack of access to essential health care. Further, relocating would deprive the applicant's wife of contact with extended family members, all of whom live here.

Regarding hardship due to separation from the applicant, the record contains evidence in support of claims that before the applicant left the country, he and his wife started a small business, her children came to trust his judgment, and she herself came to rely on him increasingly as her pain worsened and mobility decreased. She notes that the applicant's increasing responsibilities included his role in their business, as well as maintaining their house in good repair, providing massages to ease her back and foot pain, and making her take medication as instructed. Statements of the qualifying relative's adult children substantiate the negative impact his departure has had not only on his wife, but on their children, while those of her doctors confirm they are treating her depression and anxiety disorder with medication and recognize the applicant's role in assuring compliance with her prescribed treatment regimen. She worries about the applicant's safety, due to frequent shootings where he lives and his having been attacked for his wedding ring. While there is evidence the applicant's wife has visited him to ease the pain of separation, the record shows she lacks the financial means to do so and was able to travel only because a niece paid for the trip.

Documentation supports claims that the qualifying relative's income diminished after the applicant left in 2009, that her husband's departure caused business income to decline, and that she has fallen behind in paying a recurring charge associated with home ownership. In his absence she had to hire an employee to do work the applicant previously performed on behalf of the business. Further, the record indicates that business income declined at the same time the qualifying relative's individual earnings were curtailed by her medical conditions and her expenses grew to include sending money to the applicant in Mexico. Assertions that the applicant's departure caused financial hardship are supported by statements detailing the problems experienced by his wife during his absence and by those of several of her children explaining that their own economic situations limit the assistance they can offer. The record reflects that she has had to postpone dental surgery deemed necessary to her health due to lack of resources.

For all these reasons, the cumulative effect of the physical and emotional, as well as financial, hardships the applicant's wife is experiencing due to his inadmissibility rises to the level of extreme. The applicant has established that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would suffer extreme hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary

matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957):

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's wife will face if the applicant remains in Mexico, regardless of whether she joins the applicant there or remains here; supportive statements; the applicant's more than 12-year residence in the United States from the age of 15; lack of any criminal record; history of gainful employment; compliance with a voluntary departure order; and statements regarding good character. The unfavorable factors in this matter concern the applicant's arrival without documentation and unlawful presence.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law and arrival as a minor in the custody of a parent, the AAO finds that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.